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No. 84-1006

In The
Supreme Court of the United States
October Term, 1984

JOHN W. WILLIAMS and WINIFRED WILLIAMS, husband and wife,

Petitioners,

vs.

TUCSON UNIFIED SCHOOL DISTRICT NO. 1 OF PIMA COUNTY, a political subdivision of the State of Arizona; and TUCSON EDUCATION ASSOCIATION, an Arizona corporation,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

RESPONDENT, TUCSON EDUCATION ASSOCIATION'S, BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

John W. Williams was, at the time he filed his lawsuit in the Pima County, Arizona Superior Court, a teacher employed by the Tucson Unified School District No. 1 of Pima County, Arizona. He was not a member of the Tucson Education Association. Tucson Education Association was the labor organization representing employees.

Though Mr. Williams was never a member of the Tucson Education Association, "his employment contract bound him to the rules in the Consensus Agreement". The Consensus Agreement was a document entered into between the Tucson Education Association representing the teachers employed by the Tucson Unified School District, and the Tucson Unified School District. This Consensus Agreement contained procedures for the filing and consideration of grievances, and additionally included many rules and regulations, none of which are applicable in the instant case.

This dispute centers around the grievance procedures set forth in the "Consensus Agreement".

The Consensus Agreement provided a procedural method for processing and reviewing grievances through various stages up the administrative ladder.

The grievance procedure further requires that any grievance be raised within fifteen working days from the occurrence of the alleged violation. As the Consensus Agreement provides in paragraph 5-3:

> "A teacher with a complaint will first present it orally and informally to the immediate supervisor within fifteen (15) working days from the occurrence of the alleged violation, or fifteen (15) working days

from the time the alleged violation is known to the teacher or the Association."

Mr. Williams filed nine grievances. Grievances numbers 1 and 2 requested that Mr. Williams' principal be made to apologize to Mr. Williams because of a remark in one instance, and an unanswered letter in another instance. The remark allegedly occurred in October, 1979, and the failure to answer a letter occurred in July or August, 1980. Neither grievance was filed within the fifteen (15) day time limit, but were in fact, filed more than four months after the latest event.

Grievance number 3 centered around an issue of compensatory time which was resolved by the District.

Grievances numbered 4 and 5 allege that on October 20, 1980, Mr. Williams was removed from his duty as a cafeteria supervisor. This item was not made the subject of any grievance until January 23, 1981, some five months and three days later. Grievances numbered 6 and 7 included allegations that Mr. Williams was denied meaningful opportunities to coach the freshman boys basketball team, and the girls varsity basketball team. These alleged infringements on his rights occurred on August 20, 1980, and no grievance was filed until well after the positions were filled and each of the seasons had begun. These grievances were filed on January 29, 1981, months after the alleged violations. Grievance number 8 centered around the assignment of Mr. Williams as a "permanent substitute". The policy of permanent substitutes was changed by the School District, thereby alleviating the claim.

Grievance number 9 was the only even arguably, timely filing based on a claim that the principal of the school "demoralized" Mr. Williams by yelling at a different individual.

In his deposition, Mr. Williams admitted that he knew of the time periods but ignored them because "he didn't feel like it". Deposition, page 73, ll. 21-23; pp. 100 through 101; p. 19, ll. 3-4; p. 19, ll. 8-12; p. 100, l. 25; p. 101, ll. 1-11. Further other portions of Mr. Williams' testimony at his deposition while under oath are as follows:

At page 22, lines 24-25:

"Q. You're aware in 1979 there was a grievance procedure in the Consent Agreement?"

Page 23, lines 1-5:

"A. Well, I just looked over the book, I was aware, yeah.

Q. You knew there was a grievance procedure in October, 1979?

A. Yeah. The answer is yes."

Referring to grievance number one, page 34, lines 18-25:

"Q. You knew that the conversation of October 2, 1979, was more than fifteen days—working days—before the time you started the grievance procedure in 1981. Is that true?

A. Oh, yes, yes, uh-huh.

Q. So you knew that the grievance was not being filed within the fifteen working days?

A. Yes."

Referring to grievance number two, page 48:

"Q. The question is, do you agree that you filed the grievance number two outside the fifteen days period?

A. Yeah, yes, uh-huh, yes."

Referring to grievance number three, page 55, lines 7-12:

"Q. And at the time on January 23, 1981, when you talked to Mr. Carrillo about the comp time practice as explained by Mr. Ingersoll on August 20, 1981, you knew that more than fifteen days had elapsed since Mr. Ingersoll told you that, is that correct?

A. Yeah, uh-huh."

Referring to the grievance regarding cafeteria supervisory duty at page 63, lines 19-24:

"Q. But you didn't start the grievance procedure until January 23, 1981, is that correct?

A. That's correct.

Q. And that's greater than fifteen days after August 20, is that correct?

A. That's correct."

Again referring to the cafeteria duty at page 73, lines 21-23:

"Q. Why didn't you file a grievance on the cafeteria duty?

A. Well, I didn't feel like it."

Referring to grievance number five, page 74, lines 1-9:

"Q. Excuse me, why didn't you feel like filing a grievance?

A. Because when he took me out of my counseling job, made me a substitute teacher, when I had to teach all those other classes, I had to teach English, Social Studies, Math, sometimes P.E., Art, lead the band, and all that stuff, that's when I really got mad. That's why. So I just unloaded all of them at the same time. That's why."

Referring to the grievance regarding the freshman boy's basketball team, page 92, lines 22-24:

"Q. You knew about the fifteen day time limit on August 20, 1980?

A. Yeah."

Page 19, lines 3-12:

"Q. Why didn't you file a grievance then?

A. I didn't feel like it at the time.

Q. Why?

A. Why?

Q. Why?

A. Just because I didn't, that's why.

Q. And no other reason?

A. That's my reason.

Q. Just because?

A. That's my reason."

Referring to comp time/demoralization grievance on August 1, 1979, and cafeteria grievance, page 100, line 25, page 101, lines 1-11:

"Q. Thank you. On October 15, you knew that Mr. Carrillo demoralized you on October 1, 1979. You knew on that date that he had not answered your letter by August 20, 1980. You know that comp time practices had been reported to you by Mr. Ingersoll were different than what you thought they were. You knew that the cafeteria duty was removed from you. Why didn't you file any grievances at that point in time?

A. I didn't feel like it.

Q. But you knew you had a fifteen day time limit from that time—

A. Yes.

Q. —an event occurred to the time you filed your grievance, is that correct?"

Presented to the Trial Court were affidavits of Ralph Baker, Elaine Caret, Joyce Drake, Bill Goettsch, Arthur Kindelar, Judith Krelleff, William Lamson, Geraldine MacKaben, Marian Pickett, Linda Pair-Roberts, Randall Smith, Judy Stewart, and John Irvin which, without contradiction by Mr. Williams or anyone on his behalf, showed that neither Mr. Williams' membership or non-membership status in the Tucson Education Association played any part of the discussions of any participants in the decisions concerning Mr. Williams' grievances. One of the reasons for summary judgment against Mr. Williams was that it was unequivocally shown that Mr. Williams was treated in the same fashion as any other teacher would have been treated whether or not the individual was or was not a member of the Tucson Education Association.

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ARGUMENT

It is difficult to respond to the allegations and positions taken by Mr. Williams, because the positions have been taken in a scatter gun type approach, and none of the allegations contain any degree of specificity. There is little focus to any of the allegations.

The Petition raises no substantial Federal legal grounds for a decision by this Court. In addition, a brief reading of Petitioner's own pleadings show that ample and adequate independent State grounds for relief

were present, and preclude certiorari. *Orr v. Alabama,* 440 U.S. 268, 99 S.Ct. 1102, 59 L.Ed.2d 306 (1979); *Zacchini v. Scripts-Howard Broadcasting Co.,* 433 U.S. 562, 97 S.Ct. 2489, 53 L.Ed.2d 1965 (1977).

. . . "The risk of an erroneous depravation" and "the degree of potential depravation" do not raise this case even to the level rejected in *Hortonville Joint School District No. 1 v. Hortonville Education Association,* 426 U.S. 482, 495, 96 S.Ct. 2308, 49 L.Ed.2d 1, 10 (1976).

Petitioner's pleadings in this Court blithely skip over the issue of timeliness by arguing that the grievances were "continuing in nature and therefore timely". Petition for Writ of Certiorari, at page 10. However, the Arizona Court of Appeals found to the contrary. The Arizona Court of Appeals in its Opinion (found on page A-12 of Appendix A of the Petition for Writ of Certiorari) includes the following language:

> "The Appellant's contract containing the grievance procedures which he utilized required him to observe certain specified time limits for the filing of a grievance. Thus, at level one he was obliged to file within fifteen working days. Except for grievances 8 and 9, none were filed within anywhere close to that time."

Grievance 8, as mentioned in the Statement of Facts, is moot, grievance 9 requested that the Tucson Unified School District take action against the principal who made a remark to another individual.

The Court found the timeliness issue to be, in and of itself, a sufficient reason for denying the grievances.

It is also conceded and has been conceded by Mr. Williams and his counsel that Mr. Williams was treated

respectfully, and his positions reviewed by the Tucson Education Association fairly and completely. In fact, Mr. Williams does not even question the fact that the Executive Director of the Tucson Education Association presented Mr. Williams' side of the case to the Executive Board of the Tucson Education Association in a fair and equitable manner. The affidavits referred to previously showed that the decision on whether to proceed with Mr. Williams' grievances was based on the merits of those grievances, and on no other factors.

Not only that, the Tucson Education Association provided Mr. Williams and his attorney with the chance to speak to the issues raised in his grievances. Parenthetically, it should be noted that the first time that allegations concerning "continuing grievances" were raised occurred in the Superior Court, no such issue or arguments being raised administratively.

In fact, throughout the record of this case, there is not one way in which Mr. Williams can point to the Tucson Education Association as breaching any perceived duties of fairness to him. His prime function when boiled down to its essential seems to be, "they did not let me go to arbitration, therefore, they have breached all manner of duties to me." The Trial Court, the Arizona Court of Appeals, and the Arizona Supreme Court properly found that there were no issues of fact remaining, and that extensive discovery showed no action on behalf of the Tucson Education Association which even could be classified as "negative".

Throughout the proceedings, there is not one perceived event that can be shown to be arbitrary, discrim-

inatory, or in bad faith. The Arizona Courts have rejected Mr. Williams' attempts to have his claims determined to be endless, continuing complaints and therefore subject to review ad infinitum. In any event, this decision was a matter of State law, and raises no substantial Federal question.

In Arizona, prior to raising an issue in the Courts, an individual must exhaust his administrative remedies. The Arizona Courts have so held in *Campbell v. Mountain States Telephone,* 120 Ariz. 426, 586 P.2d 987. Mr. Williams simply failed to properly raise the issues administratively in proper fashion, so that his purported constitutional claims, and other assertions simply are not ripe for adjudication in the highest Court in the land.

It is uncontroverted that Mr. Williams ignored the grievance procedures, and that any failure to present anything was his own fault. He now asks the highest Court in our land to review adverse activity which was caused because Mr. Williams "didn't feel like" pressing grievances. It is axiomatic that litigants must first raise Federal issues in State Courts in such a format as to ripen the issues sufficient for fair adjudication.

Perhaps, the Arizona Court of Appeals stated it best when they noted as follows:

> "Thus, not only do we believe summary disposition in the Trial Court was proper, we find this appeal to be frivolous. From our examination of the record, it appears that the appellants are attempting to use the Courts to somehow redress alleged wrongs for which they have no legal or equitable remedy. For example, Grievance No. 1 sought to order an apology from the principal. Although the prayer of his complaint does not seek such an apology, it does pray

> for an order requiring TUSD 'to insure that the conduct of its agents and employees toward him is professional and courteous.' Our courts do not exist for that kind of purpose. *See* Annotation in 47 A.L.R. 2d 319 discussing the maxim 'de minimus non curat lex,' the law does not concern itself with trifles. The same can be said of any relief claimed in the complaint because of Grievance No. 2, the failure to answer his letter; Grievance No. 8, his assignment as a 'permanent substitute'; and Grievance No. 9."

As to the issues of timeliness, the Arizona Court of Appeals noted as follows:

> "It is inconceivable that the appellant can contend that this court should order TUSD to now pay him for a part-time supervisory position from August 1980, give him the position of freshman boys' basketball Coach with pay from August 1980, and also make him head girls' varsity basketball coach at the same time. These positions were filled before his grievances were filed."

Mere subjective expectancies without substance do not reach the level of due process protection. *Perry v. Sindermann*, 408 U.S. 593, 603 (1972).

Respectfully submitted,

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